

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 776

**Introduced by Assembly Members ~~Aghazarian and Lieu~~ Member
*Aghazarian***

February 22, 2007

An act to add Section 25503.38 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as amended, Aghazarian. Alcoholic beverages: advertising.

Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages.

This bill would expressly authorize a beer manufacturer, beer and wine wholesaler, distilled spirits rectifier, distilled spirits manufacturer, distilled spirits manufacturer's agent, or a holder of a winegrower's license to sponsor or purchase advertising space and time from, or on behalf of, an off-sale retail licensee that is an owner or coowner of a professional sports team that is a tenant of, and plays its home games in, a specified arena, under specified conditions. This bill would also make a beer manufacturer, distilled spirits rectifier, distilled spirits manufacturer, distilled spirits manufacturer's agent, or a holder of a winegrower's license who, through coercion or other means, includes the holder of a wholesaler's license to fulfill those contractual obligations guilty of a misdemeanor. This bill would additionally make

an off-sale retail licensee, as described, who solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, distilled spirits rectifier, distilled spirits manufacturer, distilled spirits manufacturer's agent, or a holder of a winegrower's license to sponsor or purchase advertising time or space is guilty of a misdemeanor. The bill thus imposes a state-mandated local program by creating new crimes.

This bill also makes findings and declarations regarding the need for special legislation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25503.38 is added to the Business and
- 2 Professions Code, to read:
- 3 25503.38. (a) Notwithstanding any other provision of this
- 4 chapter, a beer manufacturer, beer and wine wholesaler, distilled
- 5 spirits rectifier, distilled spirits manufacturer, distilled spirits
- 6 manufacturer's agent, or a holder of a winegrower's license may
- 7 sponsor or purchase advertising space and time from, or on behalf
- 8 of, an off-sale retail licensee subject to all of the following
- 9 conditions:
- 10 (1) The off-sale retail licensee is an owner or coowner of a
- 11 professional sports team.
- 12 (2) The professional sports team owned or coowned by the
- 13 off-sale retail licensee is a tenant of, and plays its home games in,
- 14 an arena with a fixed seating capacity in excess of 10,000 seats
- 15 located in San Joaquin County.
- 16 (3) The advertising space or time is sponsored or purchased
- 17 only in connection with the professional sports team's events held
- 18 on the premises of the arena.
- 19 (b) Any sponsorship or purchase of advertising space or time
- 20 conducted pursuant to subdivision (a) shall be conducted pursuant
- 21 to a written contract entered into by the beer manufacturer, beer
- 22 and wine wholesaler, distilled spirits rectifier, distilled spirits

1 manufacturer, distilled spirits manufacturer's agent, or a holder of
2 the winegrower's license and the off-sale retail licensee and all
3 other coowners, where applicable.

4 (c) Any beer manufacturer, distilled spirits rectifier, distilled
5 spirits manufacturer, distilled spirits manufacturer's agent, or a
6 holder of the winegrower's license who, through coercion or other
7 illegal means, induces, directly or indirectly, a holder of a
8 wholesaler's license to fulfill those contractual obligations entered
9 into pursuant to subdivision (a) or (b) shall be guilty of a
10 misdemeanor and shall be punished by imprisonment in the county
11 jail not exceeding six months, or by a fine in an amount equal to
12 the entire value of the advertising space or time involved in the
13 contract, whichever is greater, plus ten thousand dollars (\$10,000),
14 or by both imprisonment and fine. The person shall also be subject
15 to license revocation pursuant to Section 24200.

16 (d) Any off-sale retail licensee described in subdivision (a) who,
17 directly or indirectly, solicits or coerces a holder of a wholesaler's
18 license to solicit a beer manufacturer, distilled spirits manufacturer,
19 distilled spirits manufacturer's agent, or a holder of the
20 winegrower's license to sponsor or purchase advertising time or
21 space pursuant to subdivision (a) or (b) shall be guilty of a
22 misdemeanor and shall be punished by imprisonment in the county
23 jail not exceeding six months, or by a fine in an amount equal to
24 the entire value of the advertising space or time involved in the
25 contract, whichever is greater, plus ten thousand dollars (\$10,000),
26 or by both imprisonment and fine. The person shall also be subject
27 to license revocation pursuant to Section 24200.

28 (e) Nothing in this section shall authorize the purchasing of
29 advertising space or time from, or on behalf of, any on-sale licensee
30 that is the owner, manager, agent of the owner, assignee of the
31 owner's advertising rights, or a tenant of the arena described in
32 paragraph (2) of subdivision (a).

33 (f) Nothing in this section shall authorize a beer manufacturer,
34 distilled spirits manufacturer, distilled spirits manufacturer's agent,
35 or a holder of the winegrower's license to furnish, give, or lend
36 anything of value to an off-sale retail licensee described in
37 subdivision (a) except as expressly authorized by this section or
38 any other provision of this division.

39 (g) For purposes of this section, "beer manufacturer" includes
40 a holder of a beer manufacturer's license, a holder of an out-of-state

1 beer manufacturer's certificate, or a holder of a beer and wine
2 importer's general license.

3 (h) The Legislature finds and declares that *it* is necessary and
4 proper to require a separation between manufacturing interests,
5 wholesale interests, and retail interests in the production and
6 distribution of alcoholic beverages in order to prevent suppliers
7 from dominating local markets through vertical integration and to
8 prevent excessive sales of alcoholic beverages produced by overly
9 aggressive sales techniques. The Legislature further finds and
10 declares that the exceptions established by this section to the
11 general prohibition against tied-house interests must be limited to
12 their express terms so as not to undermine the general prohibition,
13 and intends that this section be construed accordingly.

14 SEC. 2. Due to the unique circumstances concerning the County
15 of San Joaquin, the Legislature finds and declares that a general
16 statute cannot be made applicable within the meaning of Section
17 16 of Article IV of the California Constitution. Therefore, this act
18 is necessarily applicable only to the County of San Joaquin.

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.